

12:12PM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH BONGIOVANNI,

Defendant.

Case No. 1:19-cr-227
(LJV)

March 26, 2024

TRANSCRIPT EXCERPT - EXAMINATION OF BRIAN A. BURNS (DAY 2)
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

TRINI E. ROSS, UNITED STATES ATTORNEY
BY: JOSEPH M. TRIPI, ESQ.
NICHOLAS T. COOPER, ESQ.
CASEY L. CHALBECK, ESQ.

Assistant United States Attorneys
Federal Centre
138 Delaware Avenue
Buffalo, New York 14202

And

UNITED STATES DEPARTMENT OF JUSTICE
BY: JORDAN ALAN DICKSON, ESQ.

1301 New York Ave NW
Suite 1000
Washington, DC 20530-0016
For the Plaintiff

SINGER LEGAL PLLC

BY: ROBERT CHARLES SINGER, ESQ.
80 East Spring Street
Williamsville, New York 14221

And

LAW OFFICES OF PARKER ROY MacKAY
BY: PARKER ROY MacKAY, ESQ.

3110 Delaware Avenue
Kenmore, New York 14217
For the Defendant

PRESENT:

BRIAN A. BURNS, FBI Special Agent
MARILYN K. HALLIDAY, HSI Special Agent
KAREN A. CHAMPOUX, USA Paralegal

LAW CLERK: REBECCA FABIAN IZZO, ESQ.

COURT DEPUTY CLERK: COLLEEN M. DEMMA

COURT REPORTER: ANN MEISSNER SAWYER, FCRR, RPR, CRR
Robert H. Jackson Federal Courthouse
2 Niagara Square
Buffalo, New York 14202
Ann_Sawyer@nywd.uscourts.gov

* * * * *

(Excerpt commenced at 9:42 a.m.)

(Jury is present.)

THE COURT: I remind the witness that he's still
under oath, and you may begin your cross.

And the record should reflect that all our jurors are
present.

B R I A N A. B U R N S, having been previously duly called
and sworn, continued to testify as follows:

CROSS-EXAMINATION BY MR. MacKAY:

Q. Good morning, Special Agent Burns. How are you?

A. Good, Mr. MacKay. Good morning to you.

Q. How was your long weekend?

A. It was quiet this weekend.

Q. All right. So I want to take you back to your testimony

09:43AM 1 on Thursday. You talked a little bit about an investigation
09:43AM 2 you did into public corruption in 2009 and 2010; do you
09:43AM 3 recall that?
09:43AM 4 A. Yes.
09:43AM 5 Q. That was an investigation into people associated with
09:43AM 6 Gables bar, correct?
09:43AM 7 A. That's accurate.
09:43AM 8 Q. And I think we've heard it already, but Gables bar is a
09:43AM 9 bar on Hertel Avenue?
09:43AM 10 A. It was, it's closed now.
09:43AM 11 Q. So, but just to orient the jury, is it fair to say Hertel
09:43AM 12 Avenue is a main thoroughfare in North Buffalo?
09:43AM 13 A. Yes, a number of businesses.
09:43AM 14 Q. East-west thoroughfare off of which run a bunch of side
09:43AM 15 streets that comprise the heart of North Buffalo?
09:43AM 16 A. That's accurate.
09:43AM 17 Q. Fair to say that Gables bar, when it was open, was
09:44AM 18 something of a neighborhood haunt for a lot of people?
09:44AM 19 A. North Buffalo folks.
09:44AM 20 Q. North Buffalo folks. And I think you also said it was
09:44AM 21 believed to be frequented by a number of members believed to
09:44AM 22 be associated with IOC?
09:44AM 23 A. Some, yes.
09:44AM 24 Q. Okay. Now, this investigation ultimately leads to raids
09:44AM 25 of two people's houses, correct?

09:44AM 1 A. Yes, that's correct.

09:44AM 2 Q. One is Steven Brucato, correct?

09:44AM 3 A. That's accurate.

09:44AM 4 Q. One is Anthony Anastasia, correct?

09:44AM 5 A. Accurate.

09:44AM 6 Q. One's on Avery, one's on Lovering, correct?

09:44AM 7 A. That's right.

09:44AM 8 Q. Okay. And Brucato is believed to be the general manager

09:44AM 9 at Gables?

09:44AM 10 A. I believe he was. They were both employed there in some

09:44AM 11 capacity. Brucato, I believe, was a manager, and Anastasia

09:44AM 12 was a bartender --

09:44AM 13 Q. Okay.

09:44AM 14 A. -- possibly.

09:44AM 15 Q. But they both had some employment connection to Gables,

09:44AM 16 correct?

09:44AM 17 A. That's correct.

09:44AM 18 Q. And then in the process of raiding Brucato's house, the

09:44AM 19 FBI encounters Baby Joe Mesi, correct?

09:45AM 20 A. That's accurate.

09:45AM 21 Q. And he's found in proximity to some drugs, correct?

09:45AM 22 A. Cocaine, yes.

09:45AM 23 Q. And the FBI talks to him, and he immediately becomes an

09:45AM 24 informant, correct?

09:45AM 25 A. That's accurate.

09:45AM 1 Q. Now these -- these raids occur simultaneously, and they
09:45AM 2 occur in November of 2010, correct?

09:45AM 3 A. Well, I think they previously in '09 had conducted raids
09:45AM 4 on Brucato, Anastasia. And Brucato was cooperating
09:45AM 5 throughout the 2009 -- or, I'm sorry, in December of 2009,
09:45AM 6 approximately, there's an approach, Brucato cooperates into
09:45AM 7 '10, and it culminates -- his cooperation culminates with a
09:45AM 8 November 24th incident where we go into his residence. And
09:45AM 9 then Mr. Mesi is there with the cocaine. And he begins to
09:45AM 10 cooperate.

09:45AM 11 Q. Yeah, and I think what I was getting to is that's the
09:45AM 12 same day I think Anastasia's house is raided as well, too?

09:45AM 13 A. I believe it was earlier than that.

09:45AM 14 Q. Okay.

09:46AM 15 A. But Anastasia, there was an arrest warrant for him. He
09:46AM 16 waived his appearance. And then he ultimately ends up not
09:46AM 17 cooperating and continues to sell narcotics.

09:46AM 18 Q. So I'm going to get that.

09:46AM 19 A. Okay.

09:46AM 20 Q. So what happens is that after these raids of these folks,
09:46AM 21 they're all given waivers so that they're released from the
09:46AM 22 scene, correct?

09:46AM 23 A. That's correct.

09:46AM 24 Q. So, you know, for the jury to understand, it means that
09:46AM 25 you go in and you handcuff these folks, correct?

09:46AM

1 A. That's accurate.

09:46AM

2 Q. You sit them down and basically tell them if you don't

09:46AM

3 want to be an informant, you can leave, but we're gonna

09:46AM

4 charge you, correct?

09:46AM

5 A. That's correct. Or if they're -- at that point they may

09:46AM

6 be transported to the marshals, if they -- if you have

09:46AM

7 pending charges already.

09:46AM

8 Q. But if they agree to cooperate, they leave from the

09:46AM

9 scene --

09:46AM

10 A. Some --

09:46AM

11 Q. -- correct?

09:46AM

12 A. -- sometimes, not all. It's situation dependent.

09:46AM

13 Q. But in this situation, all three did, correct?

09:46AM

14 A. That's correct.

09:46AM

15 Q. Okay. And they're not formally charged at that point in

09:46AM

16 time, correct?

09:46AM

17 A. I think they waive their appearance. Mr. Mesi was not

09:46AM

18 charged.

09:46AM

19 Q. Right. So, ultimately, they're free go back into the

09:47AM

20 community, correct?

09:47AM

21 A. That's correct.

09:47AM

22 Q. Now, fast forward to November of 2011. DEA separately

09:47AM

23 arrests Anthony Anastasia, correct?

09:47AM

24 A. I don't know the exact -- I know that they arrested him,

09:47AM

25 I can't be certain on the date, but that -- that sounds

09:47AM 1 correct.

09:47AM 2 Q. You recall sitting here for Special Agent Nastoff's

09:47AM 3 testimony?

09:47AM 4 A. Yes.

09:47AM 5 Q. And that's what he was referring to --

09:47AM 6 A. Okay. If that --

09:47AM 7 Q. -- that date?

09:47AM 8 A. -- was the date he used, then I would -- he would be more

09:47AM 9 knowledgeable.

09:47AM 10 Q. Fair to say what he was referring to was the DEA arrest

09:47AM 11 of --

09:47AM 12 A. That's correct.

09:47AM 13 Q. -- Anthony Anastasia?

09:47AM 14 A. That's correct.

09:47AM 15 Q. And that comes sometime after the initial encounter with

09:47AM 16 Mesi that we talked about just now, correct?

09:47AM 17 A. That is correct.

09:47AM 18 Q. Now basically, as you recall, Nastoff is investigating an

09:47AM 19 individual named Richard Himbury, correct?

09:47AM 20 A. I believe he was the source of it, yes.

09:47AM 21 Q. And that they --

09:47AM 22 A. I'm sorry, I don't want to misstate that. I don't know

09:47AM 23 who his source was into it. That name sounds accurate.

09:48AM 24 Q. But ultimately, they flip that source fairly quickly and

09:48AM 25 arrest Anthony --

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1 A. That's what --
2 Q. -- Anastasia, correct?
3 A. -- I recall.
4 Q. And for lack of a better term, that kind of mucks up the
5 FBI's investigation; fair to say?
6 A. I don't know if it mucks up, but I think it ultimately
7 resulted in some coordination determining.
8 Q. But when the DEA arrest occurs, there really hadn't been
9 any deconfliction done, correct?
10 A. Not prior to that.
11 Q. So DEA kind of swooped in and made an arrest on somebody
12 that FBI was already looking into, correct?
13 A. Correct.
14 Q. Okay.
15 A. And the case agent had left, so that caused a little
16 continuity issue, too.
17 Q. And then the way that's sorted out is by deconfliction
18 done through the United States Attorney's Office, correct?
19 A. That's accurate.
20 Q. I think is it Special Agent Dan Bradley who's kind of in
21 charge of that --
22 A. Yeah.
23 Q. -- investigation --
24 A. He followed up --
25 **THE WITNESS:** I'm sorry.

09:48AM

1

THE COURT: One at a time.

09:48AM

2

THE WITNESS: Oh, I'm sorry.

09:48AM

3

THE COURT: You need to wait until he finishes.

09:48AM

4

THE WITNESS: Yeah, no, my bad. Sorry.

09:49AM

5

(Testimony was then read back by the court reporter.)

09:49AM

6

BY MR. MacKAY:

09:49AM

7

Q. -- in charge of this investigation --

09:49AM

8

A. Yes.

09:49AM

9

Q. -- for the FBI?

09:49AM

10

A. He's in charge of the Safe Streets Task Force portion,

09:49AM

11

and I'm operating basically as a source.

09:49AM

12

Q. Okay. So he attempts to do some deconfliction after this

09:49AM

13

DEA arrest with Joe Guerra and Tim Lynch at the U.S.

09:49AM

14

Attorney's Office, correct?

09:49AM

15

A. That's my understanding.

09:49AM

16

Q. And he talks to Shane Nastoff at the DEA, correct?

09:49AM

17

A. That's accurate.

09:49AM

18

Q. Because that's his contact on the Anastasia arrest,

09:49AM

19

correct?

09:49AM

20

A. Yes.

09:49AM

21

Q. And it's determined ultimately a little bit further down

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22

the road in March of 2014 that charging Anthony Anastasia

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23

from an investigation by the FBI would compromise FBI

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24

informants, correct?

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A. Yes. And the charges that DEA had, I believe, were

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1 stronger.

2 Q. That was my next question. The determination was made

3 that the evidence the DEA had at the time was stronger to

4 pursue charges against Anastasia, correct?

5 A. I would think that if it did get indicted, they would

6 have added the FBI charges if it had gotten that far.

7 Q. So, but ultimately, it leads to Anastasia is charged,

8 indicted by charges coming out of the DEA investigation,

9 correct?

10 A. Right. And he's convicted, yes.

11 Q. I'm sorry?

12 A. He's convicted --

13 Q. Yes.

14 A. -- ultimately.

15 Q. So his -- his charge, his indictment, his plea, his

16 conviction, that all stems from DEA activity, correct?

17 A. I wasn't privy to some of those meetings, but it sounds

18 accurate.

19 Q. Okay. And Brucato's not charged ultimately, correct?

20 A. Ultimately he's not charged.

21 Q. Decision is made through the U.S. Attorney's Office and

22 all the coordination through the office is not to charge

23 Brucato, correct?

24 A. Correct.

25 Q. Same thing with Baby Joe Mesi, correct?

09:50AM 1 A. Mesi was really a state misdemeanor possession. Maybe it
09:50AM 2 could have been federal, he was not charged.

09:51AM 3 Q. Correct. Okay. Now, when this deconfliction is done, as
09:51AM 4 you sit here today, you have no acknowledge that any of the
09:51AM 5 specific names of the FBI confidential informants were passed
09:51AM 6 between the agencies, correct?

09:51AM 7 A. I wasn't present for those meetings, so you're accurate.

09:51AM 8 Q. And generally speaking, though, agencies are very
09:51AM 9 protective of their C.I.s, correct?

09:51AM 10 A. They can be, and depending on -- I don't -- I mean --

09:51AM 11 Q. So my question to you, let me just put it back out there,
09:51AM 12 is that you have no knowledge that any of these names of
09:51AM 13 confidential informants like Baby Joe Mesi were passed from
09:51AM 14 FBI to DEA, correct?

09:51AM 15 A. I'm not sure of those discussions. I might have shared
09:51AM 16 it with Dave Turri, and he worked with Shane Nastoff. I know
09:51AM 17 Dave Turri was familiar with Mesi's cooperation.

09:51AM 18 Q. Okay. But as you sit here today, you don't recall
09:51AM 19 anything specifically being passed?

09:51AM 20 A. I don't recall specifically, no.

09:51AM 21 Q. Okay. Now, you're also aware that Mike Masecchia has
09:52AM 22 been associated with IOC in the North Buffalo area from 2004
09:52AM 23 and on, correct?

09:52AM 24 A. Yes, probably even earlier.

09:52AM 25 Q. Mid 2000s at least?

09:52AM 1 A. That's fair.

09:52AM 2 Q. Okay. And he's known to be a North Buffalo guy, correct?

09:52AM 3 A. Definitely.

09:52AM 4 Q. Known to frequent Gables, correct?

09:52AM 5 A. Yes, that's correct.

09:52AM 6 Q. You kind of laugh, like, you know, that's -- do you want

09:52AM 7 to expand on that? How is it known that he frequents Gables?

09:52AM 8 A. I think based the source reporting that he was a regular

09:52AM 9 over there, that and Kelly's Korner.

09:52AM 10 Q. Yeah. So he's a guy that's frequently physically at

09:52AM 11 Gables bar, correct?

09:52AM 12 A. That's my understanding from the reporting.

09:52AM 13 Q. Okay. And as you sit here today, you can't say what Mike

09:52AM 14 Masecchia knew about any investigation just from his presence

09:52AM 15 of being at Gables, correct?

09:52AM 16 A. That's accurate.

09:52AM 17 Q. Okay. And, you know, we're talking with people who were

09:52AM 18 associated with Gables, correct?

09:52AM 19 A. That's correct.

09:52AM 20 Q. You don't know whether he was privy to any gossip in the

09:52AM 21 North Buffalo area about this whole investigation, correct?

09:53AM 22 A. That is correct.

09:53AM 23 Q. You don't know whether Baby Joe Mesi disclosed his status

09:53AM 24 as an informant to anyone, correct?

09:53AM 25 A. I'd be shocked if he did. It was very -- we kept it very

09:53AM 1 tight up until this trial.

09:53AM 2 Q. Okay. But in your experience, it's -- it does happen

09:53AM 3 that informants have leaked their status --

09:53AM 4 A. Occasionally.

09:53AM 5 Q. -- is that correct?

09:53AM 6 A. Occasionally. It's not a good idea.

09:53AM 7 Q. Now, these search warrant executions that took place at

09:53AM 8 Brucato's and Anastasia's homes, those are pretty extensive

09:53AM 9 investigations that involve a lot of manpower, correct?

09:53AM 10 A. That's accurate. It can, like, I guess what -- what do

09:53AM 11 you consider a substantial amount of manpower?

09:53AM 12 Q. Like, there's a whole entry team. There's, you know,

09:53AM 13 more than five agents at a house, correct?

09:53AM 14 A. Yeah, there was mainly five. We try to do that low key.

09:53AM 15 Q. Okay.

09:53AM 16 A. Because our goal was to keep it --

09:53AM 17 Q. And has it --

09:53AM 18 A. -- low key.

09:53AM 19 Q. -- been your experience that when search warrants are

09:54AM 20 executed, particularly given some of the methods that are

09:54AM 21 used, neighbors in the neighborhood tend to take notice when

09:54AM 22 that happens?

09:54AM 23 A. Depends how do you them. Try do them low key, but some

09:54AM 24 are -- depends on the neighborhood, things like that.

09:54AM 25 Q. Again, it happens?

09:54AM 1 A. It happens, certainly.

09:54AM 2 Q. You see people come out of their houses or watch from
09:54AM 3 their windows when these executions are going down, correct?

09:54AM 4 A. Yes, it happens.

09:54AM 5 Q. Okay. And because, I mean, as you sit here today, you
09:54AM 6 don't know what the general neighborhood understanding of
09:54AM 7 Steven Brucato -- bad question.

09:54AM 8 Brucato was known as a manager of Gables, correct? In
09:54AM 9 some capacity?

09:54AM 10 A. Known by whom?

09:54AM 11 Q. I mean, he had been a manager at Gables for quite some
09:54AM 12 time, correct?

09:54AM 13 A. That's my understanding.

09:54AM 14 Q. Okay. So, when do you the search warrant execution, Baby
09:54AM 15 Joe Mesi leaves from the house, correct?

09:54AM 16 A. Yeah, I think we -- this is going back, we left him
09:55AM 17 behind. And then we all kind of discreetly exited, and then
09:55AM 18 eventually he left. He didn't leave with us, if that's what
09:55AM 19 you're asking.

09:55AM 20 Q. Yeah, I think I'm trying to form a time frame that after
09:55AM 21 the FBI goes in and executes the search warrant, Baby Joe
09:55AM 22 Mesi is allowed to walk out of the house on his own, correct?

09:55AM 23 A. Yes, he absolutely is.

09:55AM 24 Q. Okay. And you learned in the course of your
09:55AM 25 investigation also that he would often go to Brucato's home

09:55AM 1 to prepare cocaine, correct?

09:55AM 2 A. Yes.

09:55AM 3 Q. Okay. So, you know, being the recognizable person that

09:55AM 4 he was, you don't know that somebody who didn't see the

09:55AM 5 search warrant execution can see him leave freely after the

09:55AM 6 FBI was there, didn't start a rumor, correct?

09:55AM 7 **MR. COOPER:** Objection. Calls for speculation as to

09:55AM 8 what somebody else might have seen?

09:55AM 9 **THE COURT:** Yeah, sustained.

09:55AM 10 **BY MR. MacKAY:**

09:55AM 11 Q. All right. You were here present through Lou Selva's

09:56AM 12 testimony, correct?

09:56AM 13 A. That's correct.

09:56AM 14 Q. Do you recall him testifying that he had Baby Joe Mesi's

09:56AM 15 phone number in his phone, correct?

09:56AM 16 A. I believe he did. I'd have to see the contacts, but I

09:56AM 17 believe he did.

09:56AM 18 Q. Okay.

09:56AM 19 A. I know a number of the people that I referenced in that

09:56AM 20 chart had it, and I just can't say specifically --

09:56AM 21 Q. Okay.

09:56AM 22 A. -- that Mr. Selva did.

09:56AM 23 Q. So we'll talk about the phone contacts. So what you went

09:56AM 24 through on Thursday, it's in evidence as Government

09:56AM 25 Exhibit 310AT is some contacts from Peter Gerace's phone,

09:56AM 1 correct?

09:56AM 2 A. That's correct.

09:56AM 3 Q. Okay. What 310AT is, is a report that's prepared from

09:56AM 4 the extraction of the phone, correct?

09:56AM 5 A. That's accurate.

09:56AM 6 Q. What's in 310AT is not all of the contacts from Peter

09:56AM 7 Gerace's phone, correct?

09:56AM 8 A. No, just certain ones.

09:56AM 9 Q. Right. There's many, many more that what's just in that

09:56AM 10 list, correct?

09:56AM 11 A. Absolutely.

09:56AM 12 Q. Yeah, there's 56 records in this report. That's not all

09:57AM 13 the contacts in his phone --

09:57AM 14 A. That --

09:57AM 15 Q. -- correct?

09:57AM 16 A. -- is not.

09:57AM 17 Q. And you've worked with these cell phone extraction

09:57AM 18 reports before, correct?

09:57AM 19 A. Yes, I have.

09:57AM 20 Q. And you understand that the way they're made is somebody

09:57AM 21 has to go in after the extraction and manually put this

09:57AM 22 record together, correct?

09:57AM 23 A. Yeah, if you want a carve out a portion of the contacts,

09:57AM 24 that's how you do it.

09:57AM 25 Q. That's exactly what I'm saying. Is that somebody has to

09:57AM 1 go in and manually make the decision on what goes in the
09:57AM 2 report, correct?

09:57AM 3 A. That's correct.

09:57AM 4 Q. Okay. So, there's somebody who decides which contacts go
09:57AM 5 in the report, and which contacts do not, correct?

09:57AM 6 A. Correct.

09:57AM 7 Q. Okay. All right.

09:57AM 8 **MR. MacKAY:** So, Ms. Champoux can we pull up
09:57AM 9 Government Exhibit 310AT in evidence. Can we go to page 4,
09:57AM 10 please?

09:57AM 11 **BY MR. MacKAY:**

09:57AM 12 Q. Can you see that, or is that too blurry?

09:57AM 13 A. I think I -- yeah, I can city.

09:57AM 14 **MR. MacKAY:** In fact, can we blow up record number 1,
09:58AM 15 please, Ms. Champoux? Okay.

09:58AM 16 **BY MR. MacKAY:**

09:58AM 17 Q. That's an individual contact named Mark Anthony. Do you
09:58AM 18 recall him being a Buffalo police officer?

09:58AM 19 A. Yes.

09:58AM 20 Q. Okay.

09:58AM 21 **MR. MacKAY:** Ms. Champoux, can we take that down.
09:58AM 22 Can we go to page 5, please? Can we blow up record number 5,
09:58AM 23 please?

09:58AM 24 **BY MR. MacKAY:**

09:58AM 25 Q. So that entry says Jill Berkeley, W Seneca Police. Do

09:58AM 1 you see that?

09:58AM 2 A. Yes, I do.

09:58AM 3 Q. Looks like that's referring to a policewoman from the
09:58AM 4 West Seneca Police Department?

09:58AM 5 A. Yeah, I don't know if there is a Ms. Berkeley with the
09:58AM 6 West Seneca police, I don't know. I just --

09:58AM 7 Q. You just know from the record that that's what it appears
09:58AM 8 to be?

09:58AM 9 A. That's how it's stored on Mr. Gerace's phone.

09:58AM 10 **MR. MacKAY:** Okay. Let's take that down,
09:58AM 11 Ms. Champoux. Can we go to page 7? Can we blow up record 12?

09:58AM 12 **BY MR. MacKAY:**

09:58AM 13 Q. So that's Dan Derenda, correct?

09:59AM 14 A. That's correct.

09:59AM 15 Q. You know him to be the former chief of police, City of
09:59AM 16 Buffalo, correct?

09:59AM 17 A. Yes, I do.

09:59AM 18 **MR. MacKAY:** Can we take that down, Ms. Champoux?
09:59AM 19 Go to page 11. Can we blow up record 23, please?

09:59AM 20 **BY MR. MacKAY:**

09:59AM 21 Q. Okay. That's -- can you see it's stored in the phone as
09:59AM 22 Mario NFTA?

09:59AM 23 A. Yes, I see that.

09:59AM 24 Q. But the name appears to be Mario Capozzi?

09:59AM 25 A. Yes.

09:59AM 1 Q. And NFTA, that stands for Niagara Frontier Transportation
09:59AM 2 Authority, do you know what that acronym --

09:59AM 3 A. I know that acronym can mean Niagara Falls Transportation
09:59AM 4 Authority.

09:59AM 5 Q. So that's somebody associated with a governmental entity,
09:59AM 6 correct?

09:59AM 7 A. Possibly.

09:59AM 8 **MR. MacKAY:** Okay. Can we take that down, please,
09:59AM 9 Ms. Champoux? Can we go to page 13. Can we blow up record
09:59AM 10 30, please?

09:59AM 11 **BY MR. MacKAY:**

09:59AM 12 Q. This one's in the phone as Pete T., correct?

10:00AM 13 A. That's correct.

10:00AM 14 Q. If you look at the address a few lines below, it shows
10:00AM 15 Peter Todoro?

10:00AM 16 A. That's correct.

10:00AM 17 Q. Do you know why this was put in the report as you sit
10:00AM 18 here today?

10:00AM 19 A. I wasn't the one who did the initial carve up. I believe
10:00AM 20 Mr. Todoro is an attorney, I believe.

10:00AM 21 Q. That's what I was gonna say. Do you know him to be a
10:00AM 22 state court DWI practitioner?

10:00AM 23 A. I know him to be an attorney. I don't know what sort of
10:00AM 24 practice he does. I know he does defense work.

10:00AM 25 **MR. MacKAY:** Okay. Can we take that down, please,

1 Ms. Champoux? Can we pull up page 17, please? Can we blow up
2 record 43, please?

3 **BY MR. MacKAY:**

4 Q. Do you see this one says Dawn, Cheek PD; do you see that?

5 A. I do.

6 Q. Looks like it could be somebody associated with the
7 Cheektowaga Police Department?

8 A. Possibly. I don't know.

9 Q. And that is the -- Cheektowaga is the jurisdiction in
10 which Pharaoh's falls, correct?

11 A. That's accurate.

12 **MR. MacKAY:** Let's take that down. And last but not
13 least, could we pull up record 45?

14 **BY MR. MacKAY:**

15 Q. And that one is Greg Trotter; do you see that?

16 A. Yes.

17 Q. And he's an Amherst police detective, correct?

18 A. That's correct.

19 Q. Okay.

20 **MR. MacKAY:** So we can take that down, Ms. Champoux.

21 **BY MR. MacKAY:**

22 Q. So just in the 56 records we've been through, there's,
23 you would agree with me, a number of these records that are
24 associated with law enforcement in some fashion, correct?

25 A. Some of them, yes.

10:01AM 1 Q. All right. And that's, of course, we're not even delving
10:01AM 2 into the full list of contacts that's on Gerace's phone,
10:01AM 3 correct?
10:01AM 4 A. That's correct.
10:01AM 5 Q. Because this is only a subset of them, correct?
10:01AM 6 A. That's accurate.
10:01AM 7 Q. All right. So next, I want to talk to you about your
10:01AM 8 participation in a search warrant execution at Pharaoh's.
10:01AM 9 You were part of that in December --
10:01AM 10 A. Yep.
10:01AM 11 Q. -- of 2019?
10:01AM 12 A. Yes, I was.
10:01AM 13 Q. And I think you told us on direct that you seized the DVR
10:02AM 14 from the location?
10:02AM 15 A. DVRs were seized. I didn't physically -- I was present
10:02AM 16 when they were seized, but it wasn't -- I was not the seizing
10:02AM 17 agent.
10:02AM 18 Q. Okay.
10:02AM 19 A. I remember them being recovered.
10:02AM 20 Q. And so just the jury's clear, DVR, that's the hard drive
10:02AM 21 recording for a CCTV security footage camera system?
10:02AM 22 A. Yeah, there were three DVRs, and they contained an
10:02AM 23 extensive number of cameras.
10:02AM 24 Q. Did you observe the cameras actually working when you
10:02AM 25 were there?

1 A. Well, they were shut off I think when we -- well, when
2 the team made entry. I came shortly thereafter. But they
3 were reviewed, and they did operate, as I mentioned on my
4 direct. One of them was seven weeks -- or, one DVR had
5 storage for seven weeks. And the other two were stored for
6 two weeks.

7 Q. But my question is, you -- you learned that they were
8 operating cameras, correct?

9 A. Yes.

10 Q. And in your experience, you've done investigations where
11 you have to obtain security camera footage, correct?

12 A. Yes.

13 Q. And the norm with most of these cameras is they rewrite
14 over themselves after a specific period of time, correct?

15 A. Yes.

16 Q. So, you know, whether it's 30 days, two weeks, that's
17 something in the order of what you usually see when you do --
18 when you see security cameras?

19 A. Yeah. They have a limited time frame, and they loop over
20 just for storage reasons.

21 Q. Okay. All right. So lastly, I want to talk about the
22 Wayne Anderson file. That's the C2-13-0026 file, correct?

23 A. That's correct.

24 Q. We'll call it the Wayne Anderson file. If we call it the
25 Ron Serio file, same thing, we can agree?

10:03AM 1 A. Essentially, yes.

10:03AM 2 Q. Yeah, okay. So you testified on direct about your

10:03AM 3 observations of that file, correct?

10:03AM 4 A. Yes, I did.

10:03AM 5 Q. You initially first encountered it when it was found in

10:03AM 6 Mr. Bongiovanni's residence, correct?

10:03AM 7 A. I'm sorry? Would you repeat that question?

10:03AM 8 Q. Initially -- you initially first encountered this file

10:03AM 9 when it was found in Mr. Bongiovanni's basement, correct?

10:04AM 10 A. The -- the -- the work file that was in his basement

10:04AM 11 versus the -- I'm sorry, versus the -- I guess I'm -- are you

10:04AM 12 trying to make a distinction between the case file, the DEA

10:04AM 13 case file from the office, or -- and the one in the basement?

10:04AM 14 Q. Yeah, let's clear that up.

10:04AM 15 A. Okay.

10:04AM 16 Q. So there's two different files. Why don't you explain

10:04AM 17 for the jury the difference --

10:04AM 18 A. Okay.

10:04AM 19 Q. -- between which ones were which, and how you reviewed

10:04AM 20 both?

10:04AM 21 A. Okay. So from the DEA, we received the official case

10:04AM 22 file from the their records. And that included paper

10:04AM 23 records, and then as they were transitioning, there's also a

10:04AM 24 digital portion of that file. So I reviewed the digital

10:04AM 25 portion and the paper file of the official file maintained by

10:04AM 1 DEA. And I additionally reviewed all the pages of the file
10:04AM 2 that we've seen in the Redweld from the basement.

10:04AM 3 Q. Okay. We'll call it the Redweld. That's the working
10:04AM 4 file, correct?

10:04AM 5 A. That's what I believe everyone's been calling it. The
10:04AM 6 file found in Mr. Bongiovanni's basement.

10:05AM 7 Q. Now, just to be clear, I think you established this on
10:05AM 8 the direct, but you've never been employed by DEA, right?

10:05AM 9 A. I have not.

10:05AM 10 Q. You've never served in a TFO capacity at DEA, correct?

10:05AM 11 A. No, I've worked quite a number of cases -- not a quite a
10:05AM 12 number -- a number of cases with the DEA both in Memphis and
10:05AM 13 in Buffalo.

10:05AM 14 Q. You worked cases in conjunction, but you were never sent
10:05AM 15 over as a TFO the way we've heard with some of these folks
10:05AM 16 who testified in this trial, correct?

10:05AM 17 A. Yes, I was never a signed TFO with DEA.

10:05AM 18 Q. So long story short, you did not for example have a desk
10:05AM 19 at the Buffalo resident office of the DEA, correct?

10:05AM 20 A. I did not.

10:05AM 21 Q. Okay. So when you reviewed the file, and when I talk
10:05AM 22 about the file going forward, I mean both the working file,
10:05AM 23 the case file you obtained, everything regarding C2-13-0026,
10:05AM 24 you reviewed the entire file, correct?

10:05AM 25 A. That's correct.

1 Q. And when you did so, at that point in time you had
2 already become aware of allegations about -- that allegations
3 that had been made against Mr. Bongiovanni, correct?
4 A. That's accurate.
5 Q. Okay. And you were viewing the file with an
6 understanding of those allegations, correct?
7 A. Yes, I was reviewing the file having known those
8 allegations.
9 Q. Right. I mean, you knew what Joe Bongiovanni was accused
10 of doing by the time you actually went and looked in the
11 file, correct?
12 A. That's correct.
13 Q. And you looked through the file with an eye toward
14 whether what you saw in that file supported or disproved
15 those allegations that you understood, correct?
16 A. Can you repeat that?
17 Q. When you looked through the file, you looked through it
18 with an eye toward whether what you saw in the file either
19 supported or disapproved the allegations you knew about,
20 correct?
21 A. I reviewed the file with the understanding of what he had
22 been accused of. So, yeah, that's how I reviewed the file.
23 Q. Okay. So, in the file, you saw a lot of subpoenas,
24 correct?
25 A. Quite a few.

10:07AM 1 Q. Hundreds of pages worth, correct?

10:07AM 2 A. Absolutely.

10:07AM 3 Q. There were utility records run for a number of different

10:07AM 4 addresses, correct?

10:07AM 5 A. That's correct.

10:07AM 6 Q. There were toll logs run for a number of different phone

10:07AM 7 numbers, correct?

10:07AM 8 A. That's correct.

10:07AM 9 Q. There were hot lists made off of those toll logs for a

10:07AM 10 number of phone numbers, correct?

10:07AM 11 A. That's correct.

10:07AM 12 Q. There were surveillance photos of some sort, correct?

10:07AM 13 A. There were three. Two of a location on Hertel Avenue,

10:07AM 14 and one of -- appears to be a BMW in front of a residence.

10:07AM 15 Q. Okay.

10:07AM 16 A. Those were three photos that I can recall seeing.

10:07AM 17 Q. And all those things we just talked about, hot lists,

10:07AM 18 toll logs, subpoenas, utility records, those were all

10:07AM 19 investigative steps in a narcotics investigation, correct?

10:07AM 20 A. Yes, they are.

10:07AM 21 Q. And you reviewed the file and saw that there were

10:08AM 22 operations plans to conduct controlled buys from an

10:08AM 23 individual named T.S., correct?

10:08AM 24 A. I saw two operations plans that were not finally signed

10:08AM 25 off by the -- their -- I think they have a -- the final

10:08AM 1 signing authority which I believe is their RAC, or they have
10:08AM 2 different designations for their --
10:08AM 3 Q. So you saw --
10:08AM 4 A. -- managers than we do.
10:08AM 5 Q. -- these operation plans that had sign offs from group
10:08AM 6 supervisors and the RACs, correct?
10:08AM 7 A. I --
10:08AM 8 Q. But they were missing the ASAC's?
10:08AM 9 A. That's right. If that's what -- I'd have to see them to
10:08AM 10 say that definitively, but they -- they were definitely not
10:08AM 11 finalized --
10:08AM 12 Q. Right, so --
10:08AM 13 A. -- is my point.
10:08AM 14 Q. -- they went up to a certain point, but they were missing
10:08AM 15 sort of a file signature to complete approval of the
10:08AM 16 operation; fair to say?
10:08AM 17 A. That's correct.
10:08AM 18 Q. Okay. And you didn't see signatures memorialized on the
10:08AM 19 plans indicating that funds were paid out, correct?
10:08AM 20 A. Yes. It did not appear that funds were received by
10:09AM 21 Mr. Bongiovanni for the buy.
10:09AM 22 Q. Okay. But from looking at the plans, you do see
10:09AM 23 documentation that plans were set up, they just weren't
10:09AM 24 ultimately approved at some level; fair to say?
10:09AM 25 A. Yeah, they were not signed off on by the final step.

10:09AM 1 Whether -- I wouldn't want to speculate on whether they
10:09AM 2 weren't approved or whether they weren't advanced, I don't
10:09AM 3 know how that want. I just know that they, in the file, they
10:09AM 4 were not signed off with a final authority, so --
10:09AM 5 Q. Well, they lacked some level of approval somewhere down
10:09AM 6 the line, correct?
10:09AM 7 A. Yeah, the signoff.
10:09AM 8 Q. All right. You also saw, I think you told us, the
10:09AM 9 surveillance photo of a car believed to be driven by Tom
10:09AM 10 Serio, correct?
10:09AM 11 A. That's correct.
10:09AM 12 Q. That's the white BMW photo?
10:09AM 13 A. That's correct.
10:09AM 14 Q. There were NADDIS reports for various names, correct?
10:09AM 15 A. Yes, there were some NADDIS reports.
10:09AM 16 Q. And you saw names in the file of people we heard that are
10:10AM 17 connected here to Ron Serio, correct?
10:10AM 18 A. Yes, I saw names connected --
10:10AM 19 Q. You saw --
10:10AM 20 A. -- to the Ron Serio DTO.
10:10AM 21 Q. Yeah, you saw names like Mark Falzone, correct?
10:10AM 22 A. Yes.
10:10AM 23 Q. You saw Chris Baker?
10:10AM 24 A. Yes.
10:10AM 25 Q. Is that correct?

10:10AM

1 A. Yes.

10:10AM

2 Q. You saw Mike Moynihan, correct?

10:10AM

3 A. Yes.

10:10AM

4 Q. But, in your review of the file, you also didn't see

10:10AM

5 certain names that Mr. Serio associated with his DTO,

10:10AM

6 correct? Let me give you an example.

10:10AM

7 A. Yeah, give me an example.

10:10AM

8 Q. You didn't see Jacob Martinez's name anywhere in the

10:10AM

9 file, correct?

10:10AM

10 A. I saw a lot of names. I don't know if I recall seeing

10:10AM

11 the -- the Martinez one.

10:10AM

12 Q. How about Anthony Greco? You didn't see his name, did

10:10AM

13 you?

10:10AM

14 A. I possibly did in the tolls.

10:10AM

15 Q. Okay. How about Matt LoTempio? You didn't see his name,

10:10AM

16 did you?

10:10AM

17 A. Possibly saw that in the tolls, as well.

10:10AM

18 Q. But if they're in the file, that would be in there?

10:10AM

19 A. Yeah, I guess there's -- it's probably a few thousand

10:10AM

20 pages. And if you get into the tolls, I went through each

10:11AM

21 subscriber.

10:11AM

22 Q. Okay.

10:11AM

23 A. So I saw a lot of names, but I -- to recall all of them

10:11AM

24 without going page by page would be pretty difficult.

10:11AM

25 Q. Sure. And you saw other names in the file who were most

1 definitely not connected to Ron Serio, like Dave Oddo,
2 correct?

3 A. Dave Oddo was -- I can't recall if -- Oddo was in there,
4 I'm just trying to recall the link to Serio.

5 **MR. MacKAY:** Yeah. Ms. Champoux, can we pull up
6 Government Exhibit 100A.1 in evidence. Pull that up, and I'll
7 list the file to pull up.

8 So, down in the images section, can we pull up the
9 image ending in 483.

10 **BY MR. MacKAY:**

11 Q. Okay. That's the -- so we don't have to actually
12 physically get it out, that's the picture of the front of the
13 Redweld, correct?

14 A. That's correct.

15 Q. That's the one that's found in Mr. Bongiovanni's house,
16 correct?

17 A. That's correct.

18 Q. And you see three names there, sort of bigger bold
19 letters, correct?

20 A. You mean in the -- with the Sharpie?

21 Q. Yes.

22 A. Yes.

23 Q. You see Ron and Tom Serio, and then you see Dave Oddo,
24 correct?

25 A. Right. That's correct.

1 Q. And you recall Ron Serio testifying that he hated Dave
2 Oddo, correct?

3 A. I believe that was Remus Nowak that he hated.

4 Q. Okay.

5 A. I mean, if he said that, I don't recall that.

6 Q. All right. Or that he didn't trust Dave Oddo?

7 A. I can't recall him saying that one way or the other.

8 Q. Okay. We also see the names sort of on the right side
9 not in Sharpie, Fred and Bill Weir?

10 A. That's correct.

11 Q. Okay. And neither of those names were known to be
12 associates of Ron Serio, correct?

13 A. That's correct. I did not recall Mr. Serio discussing
14 them.

15 **MR. MacKAY:** So, Ms. Champoux, I'm going to ask you
16 to jump between a few things. Can you pull up Government
17 Exhibit 8A, and go to page 420.

18 **BY MR. MacKAY:**

19 Q. Okay. Do you see what you're looking at is a -- a -- a
20 subpoena in front of you?

21 A. I do.

22 Q. In the file, and that's been signed in the lower
23 right-hand corner by the RAC, Dale Kasprzyk?

24 A. Yeah, it appears to be an admin subpoena to Cricket
25 Communications.

1 **MR. MacKAY:** Okay. Ms. Champoux, can we go to next
2 page, page 421?

3 **BY MR. MacKAY:**

4 Q. Okay. And do you see the name there Fred Weir on the
5 bottom half?

6 A. Yes, I do.

7 Q. If you need to, we can flip back to the other page. But
8 do you see that it corresponds to the number that was
9 subpoenaed from the last page?

10 A. On the -- are you talking about the front cover?

11 Q. I'm saying -- so, do you see the line between -- see the
12 line at the top of each section where it says target details
13 and gives --

14 A. Correct.

15 Q. -- phone numbers?

16 A. Yes.

17 Q. If we flip back to page 420 --

18 A. They were the subpoenaed numbers, I'm sorry.

19 Q. So you see here a subpoena, and a subpoena return that
20 involves Fred Weir, correct?

21 A. That's accurate.

22 Q. And he wasn't known to be involved with Ron Serio,
23 correct?

24 A. I don't recall him being affiliated with Ron Serio's
25 organization. Possibly with the Remus Nowak.

1 Q. Okay. Do you recall the name Charles Butera coming up in
2 the file?

3 A. Yes, I saw a number of things about Charles Butera.

4 **MR. MacKAY:** Ms. Champoux, can we go to page 382 of
5 this exhibit?

6 **BY MR. MacKAY:**

7 Q. And that's, for example, looks like a billing account
8 record for Mr. Butera?

9 A. A subscriber from -- pursuant to that subpoena number.

10 Q. Subscriber details, correct?

11 A. That's correct.

12 Q. Okay. And you recall hearing that Ron Serio did not have
13 any connection with Charles Butera, correct?

14 A. He possibly said that.

15 **MR. MacKAY:** Ms. Champoux, can we go back to
16 Government Exhibit 100A.1?

17 Can we go to the document listed Marciniak pdf.

18 **BY MR. MacKAY:**

19 Q. Okay. Here in the file, we're looking at subscriber
20 information for an individual named Brian Marciniak, correct?

21 A. Yes, I saw a number of references to him.

22 Q. And ultimately, no -- no connection is established
23 between Mr. Marciniak and Ron Serio, correct?

24 A. I didn't investigate the Ron Serio organization, so I
25 don't know --

1 Q. Well, let me ask it to you this way. As you looked in
2 the file, you didn't see any further connection between Brian
3 Marciniak and Ron Serio, correct?

4 A. It was hard, based on that file, to see any connections
5 between these numbers. There was a lack of documentation
6 indicating how these were -- names were tied to the
7 investigation.

8 Q. Right. So there's no documentation in the file that
9 memorializes how all these are connected, correct?

10 A. That's correct.

11 Q. Now you, in your capacity as an FBI special agent, is it
12 your experience that different investigators do things
13 different ways in how they memorialize things inside a file?

14 A. Yes, I would say some people do it differently than other
15 people.

16 Q. You know, in your career, you've taken over files from
17 other agents, correct?

18 A. I have.

19 Q. Like when people retire or change offices, correct?

20 A. Occasionally.

21 Q. And sometimes you have to sort through a prior file or
22 investigation, correct?

23 A. I usually try to get with the agent. I've only done it a
24 few times.

25 Q. Okay.

1 A. But I get with the agent and attempt to learn about the
2 case, and then look in the file before they are no longer --
3 Q. Right. And it's usually in your experience most helpful
4 if the agent explains to you what the connection is, correct?
5 A. It can help, and you need supporting documentation. So --
6 Q. Right. Because what I was saying is when you look
7 through a file, it's not always obvious how things are tied
8 together, correct?
9 A. It depends on the file and how it was memorialized.
10 Q. Sure. And in the file, you also saw a name Robert
11 Mettal, correct?
12 A. Yes, I did.
13 Q. And you remember Robert Mettal historically goes back to
14 an old arrest of Tom Serio, correct?
15 A. I believe that was -- I need to see that report to say
16 that. There was a, I think, a 1998 cocaine charge.
17 Q. Okay. So all in all, when you're reviewing this file, I
18 think like you were trying to tell us, some things you can
19 see connections between the names and how they fit in the
20 file, correct?
21 A. There was very little in that file that connected
22 anything. It was mostly subscriber records, it was the
23 utility records we discussed, the DEA-6s that I outlined on
24 my direct, and then the case status, those three surveillance
25 photos. And other than that, there was not a lot of

2 Q. Okay. But my question is, when you look through the
3 file, I'm talking about the working file, the file you
4 received, you're able to make some connections between some
5 of the materials; is that fair to say?

7 | Q. I'll ask one more time.

9 Q. You can make some connections at least between some of
10 the names and some of the material that's in the file,
11 correct?

13 Q. Other times, you were unable from what you saw to make
14 the connection between names and material in the file,
15 correct?

17 Q. Because it lacked any supporting documentation, correct?

19 Q. So you were sort of left on your own as you reviewed this
20 file to see whether you could connect anything if it wasn't
21 material that memorialized otherwise, correct?

24 Q. Okay. Now going back to your experience as an FBI

25 | special agent. When you're doing investigations, is it fair

1 to characterize that when you're doing an investigation,
2 you're often trying to make connections between people,
3 between phone numbers, between addresses?

4 A. Definitely.

5 Q. Okay. And in your experience, sometimes you're able to
6 make those connections, correct?

7 A. Yes.

8 Q. And then sometimes, has it been your experience that you
9 find that there's a connection that down the road really
10 isn't a connection?

11 A. Sometimes.

12 Q. For example, you find the name of somebody who lived in a
13 residence, and you ultimately find out that was just a past
14 tenant or resident?

15 A. That happens sometimes.

16 Q. Right. And so that's an example of somebody's name who
17 might end up in a file and a connection is believed to be
18 established, but ultimately is not in the long run, correct?

19 A. That happens.

20 Q. Okay. Now looking to the rest of the file and some of
21 the DEA-6s and DEA documents, you saw evidence of supervisors
22 being involved in this investigation in some capacity,
23 correct?

24 A. The supervisors did the debrief. I saw a supervisor on
25 the debrief of R.K. I saw supervisors signing the subpoenas,

10:20AM 1 the administrative subpoenas. I saw --

10:20AM 2 Q. Yeah, let's take it step by step.

10:20AM 3 A. Okay.

10:20AM 4 Q. You saw DEA -- I'm sorry, you saw DEA-6s signed off by
10:20AM 5 supervisors, correct?

10:20AM 6 A. The few that were in there, yes.

10:20AM 7 Q. You saw subpoenas that were signed off by supervisors
10:20AM 8 including the resident agent in charge of the office,
10:21AM 9 correct?

10:21AM 10 A. Yes, all -- I think admin subpoenas need to be signed off
10:21AM 11 by the --

10:21AM 12 Q. Okay.

10:21AM 13 A. -- RAC.

10:21AM 14 Q. You saw both in the reports and in other places in the
10:21AM 15 file memorialization of group supervisors being involved in
10:21AM 16 some fashion, correct?

10:21AM 17 A. Can you repeat that question?

10:21AM 18 Q. Bad question. You reviewed the contents of the DEA-6s,
10:21AM 19 correct?

10:21AM 20 A. The -- yes, the five or six that we outlined, yes, I did.

10:21AM 21 Q. And in some of those DEA-6s, you saw evidence of group
10:21AM 22 supervisors being involved in things like, for example, the
10:21AM 23 debrief of R.K., correct?

10:21AM 24 A. R.K. was the only one I saw the, like, involvement --
10:21AM 25 involvement, I understand involvement to be supervisors

10:21AM 1 sitting there debriefing the source, sort of -- if that's the
10:21AM 2 involvement, then there's just the one with R.K. where the
10:21AM 3 supervisor Flickinger is present.

10:21AM 4 Q. Okay. But let me just ask you more broadly. You did see
10:22AM 5 supervisors names and signatures in the file, correct?

10:22AM 6 A. I did.

10:22AM 7 Q. Okay. And, you know, we'll go back to those operations
10:22AM 8 plans. You saw names and signatures of supervisors in those
10:22AM 9 plans, correct?

10:22AM 10 A. Yes, I did.

10:22AM 11 Q. Now, the working file that you recovered that we showed
10:22AM 12 in the one picture, that was recovered -- to your knowledge
10:22AM 13 it was in a bigger box, correct?

10:22AM 14 A. Yes, the box in the basement.

10:22AM 15 Q. I think we've had the box out here in court, but that
10:22AM 16 contained other things than just that working file, correct?

10:22AM 17 A. Yes, there was a number of other items in there.

10:22AM 18 Q. It included some other DEA items, looked like they could
10:22AM 19 have been accumulated over a career; fair to say?

10:22AM 20 A. Fair to say. I'd have to really -- I want to look to see
10:22AM 21 what those other items were to say definitively.

10:22AM 22 Q. Sure. Do you recall, like, for example, there's some
10:22AM 23 patches of DEA operations or task forces?

10:22AM 24 A. I do remember the patches.

10:22AM 25 Q. Okay.

10:22AM 1 **MR. MacKAY:** Ms. Champoux, can we pull up Government
10:23AM 2 Exhibit 100A.1 in evidence. And go to exhibit -- the image
10:23AM 3 ending in 486.

10:23AM 4 **BY MR. MacKAY:**

10:23AM 5 Q. While she's looking that up, one of the things that you
10:23AM 6 found was a CD from an old operation called Operation Mouse
10:23AM 7 Trap?

10:23AM 8 A. I don't recall that CD.

10:23AM 9 Q. Okay.

10:23AM 10 A. I'd have to look at the evidence again.

10:24AM 11 **MR. MacKAY:** I'm sorry, Judge, we're working on
10:24AM 12 logistical things.

10:24AM 13 **THE COURT:** I get it.

10:24AM 14 **MR. MacKAY:** This goes back to what was in the box
10:24AM 15 and what was not. I've got my trustee co-counsel and the
10:25AM 16 technical assistant here hooking it up to the ELMO. I think
10:25AM 17 the government's okay with us showing it.

10:25AM 18 **THE COURT:** This is something from the box that's
10:25AM 19 been admitted into evidence?

10:25AM 20 **MR. MacKAY:** Yes.

10:25AM 21 **MR. TRIPI:** No. Can we just.

10:25AM 22 **THE COURT:** Yeah, come on up.

10:25AM 23 (Sidebar discussion held on the record.)

10:25AM 24 **MR. TRIPI:** So when we turned over their copy of
10:25AM 25 100A.1, it had everything that was in the box scanned, of

documents --

THE COURT: Okay.

MR. TRIPI: -- as well as photos of other things that had been taken out of the box. So when we admitted it, we admitted it only as a duplicate of the paper copies and the face of the file. So in other words, the only thing that 100A.1 is, is the working file and a picture of the face sheet of the working file.

THE COURT: Okay.

MR. TRIPI: So we don't have those other photos on 100A.1, so those are not in evidence.

THE COURT: So we --

MR. TRIPI: So there were other things that were photographed after they were taken out of the box that aren't part of the scan, do you know what I mean?

THE COURT: I do. But in order to have a record, we've got to mark them somehow.

MR. TRIPI: Yeah. I mean --

THE COURT: Right.

MR. TRIPI: -- that wasn't our exhibit though.

THE COURT: I understand.

MR. MacKAY: We can generate a new defense exhibit for it. We got 100A.1, it shows all the images in there, so we can pull it out, we can print it.

THE COURT: So it's on your version of 108.1, but not

on the version that was admitted?

MR. COOPER: 100A.1.

THE COURT: 100A.1.

MR. TRIPI: Because like the run up to trial, realize there were other images on the disk that weren't part of the file, that is the paper working file.

THE COURT: I got it.

MR. TRIPI: So they had a version that had more stuff than they should have.

THE COURT: Okay. So we should make that, maybe during a break, we should make that clear for the record of what's going on.

MR. TRIPI: I think that when it came in, it was clear at that time. But I think over the length of trial, we kind of --

THE COURT: Okay. So what we need to do is carve these photos out, whatever you want to admit.

MR. MacKAY: It's just going to be one.

THE COURT: Okay. And mark it as a separate exhibit.

MR. SINGER: I should have that done in a second, Judge.

MR. TRIPI: Yeah, sorry for any confusion that I caused.

MR. SINGER: I have it. I can mark it. It's going to take a minute.

10:27AM 1 **MR. COOPER:** Do you want to deem it marked, I'm fine
10:27AM 2 with that, and let's keep it moving?
10:27AM 3 **THE COURT:** 100 --
10:27AM 4 **MR. SINGER:** It's going to be Defense Exhibit P.
10:27AM 5 **THE COURT:** P?
10:27AM 6 **MR. COOPER:** I'll make a note in my notebook and we
10:27AM 7 can revisit it later.
10:27AM 8 **MR. MacKAY:** We can generate the sticker later.
10:27AM 9 **THE COURT:** Great.
10:27AM 10 **MR. COOPER:** Defense Exhibit P.
10:27AM 11 **THE COURT:** So show it to the witness first, just the
10:27AM 12 witness.
10:28AM 13 **MR. MacKAY:** Yeah.
10:28AM 14 **MR. SINGER:** Just for the witness.
10:28AM 15 (Sidebar discussion ended.)
10:28AM 16 **MR. MacKAY:** All right. Bear with me, Special Agent,
10:28AM 17 we're going to try show you a photo of what was in the box.
10:28AM 18 **BY MR. MacKAY:**
10:28AM 19 Q. I'm going to show you what's been marked for
10:28AM 20 identification as Defendant's Exhibit P. We've deemed it
10:28AM 21 marked, and we'll mark it at a later time.
10:28AM 22 Do you recognize that to be a CD that was found in the
10:28AM 23 box and taken out of the house?
10:28AM 24 A. I remember the box. I remember binders and some other
10:28AM 25 items, the patches. I don't recall that -- I don't recall

1 that CD. It's definitely possible it was in there, I just
2 don't remember the box. I was focused on the binder and the
3 file.

4 **MR. MacKAY:** All right. Ms. Champoux, can we take
5 that down, please?

6 **BY MR. MacKAY:**

7 Q. Okay. So when you did -- you did have an opportunity to
8 look through the whole box though, correct?

9 A. I looked in there, it's just been a while.

10 Q. And fair to say there's items other than just the Redweld
11 Ron Serio --

12 A. Yes.

13 Q. -- file, correct?

14 A. Yes. Definitely.

15 Q. There are -- there's DEA personal effects, correct?

16 A. If you would describe what --

17 Q. Like the patches?

18 A. Correct.

19 Q. There's -- do you recall an old gun holster being found?

20 A. I recall some older tactical equipment, yes.

21 Q. And do you recall, like I said, papers from other files
22 not being -- not related to Ron Serio being found in the
23 file?

24 A. I recall photographs of what looked to be other DEA
25 cases. I don't recall documents. There is the OCDETF file

1 in there. I don't recall anything beyond the OCDETF file and
2 the -- in the Redweld file. And, again, I didn't -- those
3 are my kind of focus in preparing for my testimony, and my
4 earlier portion of the investigation was the binder and then
5 the Redweld, but I do remember the patches.

6 Q. Long story short, though, there's other items in the box
7 other than just the file, correct?

8 A. That's correct.

9 Q. Okay.

10 **MR. MacKAY:** I have nothing further, Your Honor.

11 **THE COURT:** Redirect?

12 **MR. COOPER:** Yes, please, Judge.

13
14 **REDIRECT EXAMINATION BY MR. COOPER:**

15 Q. Special Agent Burns, just at the end there, you were
16 asked a question about other things that were in the box not
17 related to the Ron Serio file; do you remember being asked
18 that question?

19 A. Yes.

20 Q. Something you mentioned was an OCDETF file report; do you
21 remember seeing that inside the box?

22 A. Yes, I do remember that.

23 Q. Would you describe that sort of OCDETF application packet
24 as one of the most sensitive law enforcement documents that
25 you handle as a special agent?

10:31AM 1 A. I don't know if I would say "most sensitive." It's a
10:31AM 2 very sensitive law enforcement document.

10:32AM 3 Q. Is it something that you plan to bring home when you
10:32AM 4 retire?

10:32AM 5 A. Absolutely not.

10:32AM 6 Q. You were asked some questions on cross-examination about
10:32AM 7 whether Joe Mesi might have identified himself as a
10:32AM 8 confidential informant; do you remember that question?

10:32AM 9 A. Yes, I do.

10:32AM 10 Q. How many years have you been a special agent?

10:32AM 11 A. 25.

10:32AM 12 Q. Have you worked with a lot of confidential informants?

10:32AM 13 A. Quite a number of them.

10:32AM 14 Q. Is it your experience generally that they have a very
10:32AM 15 strong motivation not to out themselves as confidential
10:32AM 16 informants?

10:32AM 17 A. Yes. I can't think of any that, in my career, that have
10:32AM 18 done it. Maybe inadvertently to a spouse or --

10:32AM 19 Q. Yep.

10:32AM 20 A. -- a close friend.

10:32AM 21 Q. It wouldn't make any sense, right?

10:32AM 22 A. No, it's very dangerous, and no one wants to be exposed.

10:32AM 23 Q. You remember being asked some questions about Michael
10:32AM 24 Masecchia?

10:32AM 25 A. Yes.

10:32AM 1 Q. What was the defendant's relationship with Mike Masecchia
10:32AM 2 as you understand it?
10:32AM 3 A. They appeared to be lifelong friends.
10:32AM 4 Q. Do you remember being asked some questions about the
10:32AM 5 different contacts contained in Peter Gerace's phone?
10:32AM 6 A. Yes.
10:32AM 7 Q. You weren't the person who selected which contacts would
10:33AM 8 go in that report, right?
10:33AM 9 A. That's correct.
10:33AM 10 Q. But did you review the contacts in the report?
10:33AM 11 A. Yes.
10:33AM 12 Q. Have you heard some, I guess, testimony in this trial
10:33AM 13 about Gerace being described as a police groupie?
10:33AM 14 A. Yes, I've heard that testimony.
10:33AM 15 Q. Okay. As you sit here, are you entirely sure what the
10:33AM 16 definition of "police groupie" is?
10:33AM 17 A. No, I'm not sure.
10:33AM 18 Q. Okay. Let's talk about Dan Derenda. Dan Derenda was a
10:33AM 19 contact in Gerace's phone, right?
10:33AM 20 A. That's correct.
10:33AM 21 Q. Was there evidence in the case supporting the fact that
10:33AM 22 Dan Derenda and Peter Gerace knew each other?
10:33AM 23 A. Yes.
10:33AM 24 Q. Is there evidence in the case during your investigation
10:33AM 25 indicating that Derenda and Gerace had a personal

10:33AM

1 relationship?

10:33AM

2 A. Definitely.

10:33AM

3 Q. Can you describe that to the jury?

10:33AM

4 A. They socialized, and I can't recall as I sit here, it's

10:33AM

5 either Gerace is the godfather of his child, or vice versa.

10:33AM

6 But they were very close. He wrote the letter in support of

10:33AM

7 him back in the -- Gerace's 2006 sentencing. Additionally,

10:34AM

8 they exchanged holiday cards, or at least we saw -- we

10:34AM

9 recovered one holiday card.

10:34AM

10 Q. And you described that Derenda wrote a letter on behalf

10:34AM

11 of Gerace for his sentencing?

10:34AM

12 A. Yes, he did.

10:34AM

13 Q. There were some other police officials or names in the

10:34AM

14 contacts list that appear to be names of people in law

10:34AM

15 enforcement that you were asked about by Mr. MacKay; do you

10:34AM

16 remember that?

10:34AM

17 A. Yes.

10:34AM

18 Q. During the course of your investigation, did you find

10:34AM

19 photos of the defendant in Las Vegas with any of those

10:34AM

20 individuals?

10:34AM

21 A. I did not.

10:34AM

22 Q. Okay. Did you find any witnesses who told you that

10:34AM

23 they -- the defendant -- or, I'm sorry, that those other

10:34AM

24 police officers frequently went to dinner with Gerace?

10:34AM

25 A. I didn't. Yeah, we did not determine other -- repeat the

10:34AM 1 question, please.

10:34AM 2 Q. Sure. There were some other police officials that were
10:35AM 3 mentioned to you in the contacts list; do you remember that?

10:35AM 4 A. Yes.

10:35AM 5 Q. Like, one person from Cheektowaga, right?

10:35AM 6 A. Correct.

10:35AM 7 Q. Another person from NFTA, right?

10:35AM 8 A. That's correct.

10:35AM 9 Q. During the course of your investigation, did you learn of
10:35AM 10 Peter Gerace frequently going to dinner with those
10:35AM 11 individuals?

10:35AM 12 A. No.

10:35AM 13 **MR. MacKAY:** Objection to form. Assumes a fact not
10:35AM 14 in evidence with "frequently."

10:35AM 15 **THE COURT:** No. Overruled.

10:35AM 16 **BY MR. COOPER:**

10:35AM 17 Q. Did you learn that, or no?

10:35AM 18 A. No, I did not learn that. Trotter went to -- stopped at
10:35AM 19 Pharaoh's for food one time. I think that's the extent, from
10:35AM 20 the list that Mr. MacKay went through.

10:35AM 21 Q. During the course of your investigation, did you learn
10:35AM 22 that the defendant went to dinner with Peter Gerace on more
10:35AM 23 than one occasion?

10:35AM 24 A. Yes.

10:35AM 25 Q. Did you learn that they traveled to Las Vegas together?

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1 A. Yes.

2 Q. Did you learn that they socialized outside of Pharaoh's

3 Gentlemen's Club?

4 A. Yes.

5 Q. Did you learn that they socialized with each other's

6 spouses or significant others?

7 A. Yes. Dinners, parties, travel.

8 Q. Now you were asked some questions on cross-examination

9 about the different material you reviewed vis-à-vis

10 C2-13-0026; do you remember that question?

11 A. Yes.

12 Q. And you described a working file that was found in the

13 defendant's basement, right?

14 A. Yes.

15 Q. And then an official file, right?

16 A. Correct.

17 Q. That official file was both an electronic copy of a file,

18 right?

19 A. Correct.

20 Q. And also, like, the scanned paper file from DEA, right?

21 A. Correct, yes.

22 Q. Would it be fair to say that there were differences in

23 the contents contained in the official file that DEA was able

24 to provide, and the stuff the defendant brought home and put

25 in his basement?

1	A. Yes.
---	---------

2 Q. There were things in the defendant's basement file that
3 were not contained in the official DEA file, right?

4	A. Definitely.
---	----------------

5 Q. You were asked some questions about having difficulty
6 drawing connections between individuals and names in the
7 file, right?

8	A. Yes.
---	---------

9 Q. In the official file, were there toll analysis hot sheets
10 in the DEA official file?

11 | A. Not that I recall.

12 Q. Were those hidden in the file in the defendant's
13 basement?

14 | A. Yes, they were.

15	Q. He -- withdrawn.
----	---------------------

16 You were asked some questions about whether supervisors
17 were involved in some of the paperwork in that file, right?

18	A. Yes.
----	---------

19 Q. You saw -- you testified on cross-examination that
20 supervisors were involved in the R.K. debriefing, right?

21 | A. That's correct.

22 Q. Are you referring to the initial R.K. debriefing?

23 | A. Yeah, the R.K. --

24 Q. Is that the one where R.K. provides information about
25 Serio and drug trafficking?

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1 A. Yes.

2 Q. After that debriefing where supervisors are present, are

3 there any other DEA-6s that you found in either the official

4 file or the one in the defendant's basement documenting

5 subsequent interviews of R.K.?

6 A. None.

7 Q. You were asked some questions about people that were

8 contained in the file that were not related to Ron Serio; do

9 you remember that question?

10 A. That's correct.

11 Q. Does the name Remus Nowak come up in C2-13-0026?

12 A. From everything I looked at, it came up more in the

13 context of those case status updates.

14 Q. Okay. But the name is introduced into the file in case

15 status updates, right?

16 A. That's accurate.

17 Q. Okay. During the course of your investigation, and

18 sitting here listening to the testimony at this trial, do you

19 know whether Remus Nowak was aligned with Mike Masecchia or

20 not?

21 A. He was not. They were enemies.

22 Q. What was that?

23 A. They were enemies, according to the Serio testimony.

24 Q. You were also asked some questions about the name Dave

25 Oddo on the front of the file, right?

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1 A. Correct.

2 Q. Is that person a person that, through the investigation,
3 was believed to be Anthony Gerace's cocaine supplier?

4 A. That's correct.

5 Q. Is Anthony Gerace the person who went to the Canada
6 vacation or dinner birthday party with the defendant?

7 A. Yes, in Toronto.

8 Q. You were asked some questions about whether or not you
9 were able to determine how certain names were linked to
10 individuals in the investigation based on what was in the
11 file; do you remember that?

12 A. Yes.

13 Q. Okay. The work that was done on phone numbers, based on
14 what you reviewed, was that work that was done by Special
15 Agent Bongiovanni or by analysts at the DEA?

16 A. Yeah. The documents I looked at predominantly were all
17 from the analysts, by Bevilacqua -- Mr. Bevilacqua and
18 Mr. Borst. And they consisted of mostly just toll records
19 and subscriber records and subpoenaed records.

20 Q. Is there a way as a federal agent at a federal law
21 enforcement agency to take what's contained in an analyst's
22 work product, like a hot list, and document it in an official
23 report of investigation?

24 A. Yes.

25 Q. You can do that?

1 A. Yes.

2 **MR. COOPER:** I have no further questions, Judge.

3 **THE WITNESS:** Okay.

4 **THE COURT:** Anything more?

5 **MR. SINGER:** No.

6 **THE COURT:** Okay. You can step down, sir.

7 (Witness excused at 10:40 a.m.)

8 (Excerpt concluded at 10:40 a.m.)

9 * * * * *

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12
13 **CERTIFICATE OF REPORTER**

14
15 In accordance with 28, U.S.C., 753(b), I
16 certify that these original notes are a true and correct
17 record of proceedings in the United States District Court for
18 the Western District of New York on March 26, 2024.

19
20
21 s/ Ann M. Sawyer

22 Ann M. Sawyer, FCRR, RPR, CRR
23 Official Court Reporter
24 U.S.D.C., W.D.N.Y.
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TRANSCRIPT INDEX

EXCERPT - EXAMINATION OF BRIAN A. BURNS (DAY 2)

MARCH 26, 2024

W I T N E S S

P A G E

B R I A N A . B U R N S

2

CROSS-EXAMINATION BY MR. MacKAY:

2

REDIRECT EXAMINATION BY MR. COOPER:

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